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PACIFIC TELESIS
Group-Washington

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August 19, 1994

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

William F. Caton
Acting Secretary
Federal Communications Commission
Mail Stop 1170
1919 M St., NW Room 222
Washington, DC 20554

Dear Mr. Caton:

Re: GN Docket No. 93-252

On behalf of Pacific Bell Mobile Services, please find enclosed an original and six copies of its *"Reply Comments"* in the above-referenced proceedings.

Please stamp and return the provided copy to confirm your receipt. Please contact me should you have any questions or require additional information concerning this matter.

Sincerely,

Jo Ann Goddard

Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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OFFICE OF SECRETARY

In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act Regulatory Treatment of Mobile Services	GN Docket No. 93-252

REPLY COMMENTS OF PACIFIC BELL MOBILE SERVICES

Pacific Bell Mobile Services hereby comments on selected issues raised by the commenters in the above-captioned proceeding.

The comments contained little support for treating non-equity interests as attributable for the purpose of applying the 40 MHz limitation on PCS spectrum, the PCS-cellular cross-ownership rules or a more general commercial mobile radio service spectrum cap. Only one party out of 20 commenters supported treating non-equity interests as attributable.

I. THERE IS NO BASIS FOR TREATING A CONTRACT INVOLVING A LIMITED MANAGEMENT FUNCTION AS AN ATTRIBUTABLE INTEREST

Columbia PCS urges the Commission to permit only narrowly defined management contracts that relate to a specific function, such as construction.[1] It recommends that even such a limited management contract be treated as attributable interest[2]. Columbia PCS argues that such attribution "ensures the emergence of truly competitive markets."[3]

We disagree. Establishing an attributable interest for providing a specific, narrow function, would mean that certain companies with expertise would be unable to offer their services, if they hold licenses of their own that reach a certain limit. New entrants would find that the type of assistance they need to be fully competitive with established providers of commercial mobile radio service ("CMRS") would not always be available from the sources they may prefer. The end result of the rule that PCS Columbia seeks would not ensure competition. Instead, it would reduce it. The Commission should reject the proposal of PCS Columbia.

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[1] Columbia PCS, p. 3.

[2] Id. at p. 4.

[3] Id. at p. 5.

II. THE FCC NEEDS TO PROVIDE GUIDANCE ON ACCEPTABLE MANAGEMENT CONTRACTS AS SOON AS POSSIBLE

PCC Management Corporation ("PCC") urges the Commission to define affirmatively the sort of management agreements that comply with the Intermountain Microwave criteria.[4] We strongly agree. As PCC points out because of the complexity of modern communications, "Third party management contracts are an essential component of today's communications environment."[5] At a time when many new entrants are providing telecommunications services it is imperative that all parties to a management contract have a clear understanding as to what is permissible under the FCC rules. Unfortunately, because of the remand of the Telephone and Data Systems, Inc. case,[6] current application of the indicia of control outlined in Intermountain Microwave is unclear.

PCC suggests mandatory provisions that would provide a safe harbor.[7] PCC's approach provides the licensee with the

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[4] PCC, pp. 6-8.

[5] Id. at p. 3.

[6] See, Telephone and Data Systems, Inc. v. FCC, 19 F. 3rd 42 (D.C. Cir. 1994).

[7] PCC, pp. 6-8.

flexibility to obtain management assistance while maintaining control.

On the other hand Columbia PCS also recognizes the problem but would only permit narrow management agreements limited to specific functional task.[8] It is opposed to what it terms "general management functions" that combine functional areas such as strategy, planning, design, construction, sales, etc., and it wants such agreements treated as an improper de facto transfer of control.[9]

Such an approach is incorrect. One, it unnecessarily restricts the licensee's flexibility and puts the licensee at a competitive disadvantage because it may be difficult, if not impossible, for a licensee to adopt a coordinated strategy if it is forced to deal with a separate management company for each function. Two, it is likely to be economically and administratively inefficient.

General management agreements can be structured so that control remains with the licensee. Agreements that cover several functions should not be arbitrarily treated as a de facto transfer of control. Instead, the Commission should

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[8] Columbia PCS, pp. 3-4.

[9] Id. at p. 4.

outline what is permissible along the lines suggested by PCC as soon as possible.

III. CONCLUSION

Non-equity agreements such as resale, management, and joint marketing agreements should not be treated as attributable interests for the purpose of applying any spectrum cap. The industry as a whole will benefit from guidance on acceptable management contracts that do not rise to the level of a de facto

transfer of control. The Commission should provide such guidance as soon as possible.

Respectfully submitted,

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Date: August 19, 1994

CERTIFICATE OF SERVICE

I, Alex Kositsky, do hereby certify that a copy of the foregoing Reply Comments of Pacific Bell Mobile Services was mailed this 19th day of August, 1994, via first class United States mail, postage prepaid to the parties on the attached service list.

Alex Kositsky

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GN Docket No. 93-253
August 19, 1994

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